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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Braulio A. POLANCO et al.

Serial No.: 10/749,805

Filing Date: 31 December 2003

Title: HIGH LOFT LOW DENSITY NONWOVEN  
WEBS OF CRIMPED FILAMENTS AND  
METHODS OF MAKING SAME

Group No.: 1771

Examiner:  
Andrew T. Piziali

Customer No. 35844

Confirmation No. 5348

**REPLY TO SUPPLEMENTAL EXAMINER'S ANSWER**

**Mail Stop Appeal Brief-Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Dear Sir:

Applicants respectfully submit this Reply to the Supplemental Examiner's Answer dated 23 January 2007. Applicants believe that no fee is owed. If a fee is owed, please charge it to Deposit Account No. 19-3550.

The Examiner has presented new arguments in support of the rejection of Claims 2-9, 20-22, 24-38, 40-46, 48 and 49 under 35 U.S.C. § 112, first paragraph. In

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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*Marshall Patterson*

Signature

essence, the new arguments constitute a new basis for rejection which cannot properly be raised in the form of a Supplemental Examiner's Answer. In the first Examiner's Answer dated 17 October 2006, the Examiner plainly based the 35 U.S.C. § 112 rejection on the purported lack of a discernible trend between the formation index values recited in the claims. Having seen Applicants' Reply Brief dated 05 December 2006, the Examiner is no longer basing the rejection on the lack of a discernible trend in the claims. Instead, the Examiner now attacks isolated data points in the specification (specifically, Table 3) as allegedly failing to show a trend. This is a new ground of rejection, equally improper because no specific trend is being claimed.

As previously explained in Applicants' Reply Brief, the formation index is a measure of surface uniformity on a nonwoven web. Persons skilled in the art would know that the surfaces typically become less uniform at higher bulk (and basis weight). Thus, when the bulk or basis weight is higher, the formation index is lower. Applicants' rejected claims recite minimum formation indices at specified bulk and basis weight values, to therefore emphasize improved surface uniformity at the specified bulk and basis weight.

Applicants' specification sets forth a procedure for measuring formation index values. As reflected in Table 3, this procedure involves taking 20 measurements (both top and bottom) on a nonwoven fabric sample and averaging the 20 measurements for each of the top and bottom. The average of the 20 values provides the top side formation index and bottom side formation index reported at the bottom of Table 3.

As the Examiner stated, the individual formation index values may vary widely among the 20 measurements taken for a particular nonwoven fabric. This is precisely why the specification teaches taking 20 measurements instead of one, two or three, and providing an average value. The formation indices, each reported as an average of 20 measurements, can be reasonably duplicated by persons skilled in the art, based on the descriptions of the nonwoven fabrics provided in the specification, and how they are made.

Accordingly, the claim rejection based on 35 U.S.C. § 112, first paragraph, should be reversed.

The Examiner presents a similar argument in support of the 35 U.S.C. § 103(a) rejection of Claims 1-15, 19-22, 24-30, 34-38, 40-46, 48 and 49 based on U.S. Patent 5,382,400 ("Pike et al."). In this instance, the Examiner recognizes that if a person

skilled in the art follows the test procedure in Applicants' specification, and determines the formation index as an average of 20 measurements, then the formation index values recited in Applicants' claims are not disclosed in the prior art. However, by departing from the test procedure and viewing the measurements in isolation instead of as an average, the Examiner is able to argue that a prior art sample possesses a claimed formation index.

When a patent applicant provides a formation index as an average of 20 measurements, it is improper for the Examiner to depart from that standard when examining the claims. What the Examiner is essentially saying is he will not recognize Applicants' procedure for measuring formation index because this would result in claims which are patentable over the prior art. Only by changing the test procedure, and substituting his own procedure which relies on individual measurements instead of an average of 20, can the Examiner argue that the claims are unpatentable.

Furthermore, the Examiner now recognizes that Pike et al. does not disclose a cold FDU process as used by Applicants to make the claimed fabrics. The process of Pike et al. is different and leads to different products. Accordingly, the rejection under 35 U.S.C. § 103(a) should be reversed.

Respectfully submitted,



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